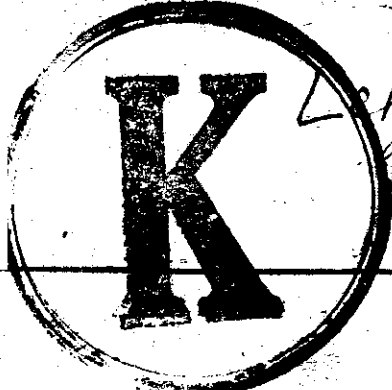


1952.

File No. O Cloth Movements
52



Legal Deptt.

CR BRANCH

Subject:—

P-5
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Opinions on the

Cotton Textile (Control of
Movement) Order 1948.

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C O N T E N T S.

Legal Department, File No. O.Cloth Movements/1952

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The Office of the State Textile Controller proposes to prosecute (1) Shri Kanayalal Ambalal, Clearing Agent, (2) Mrs. Rameshbhai Dhaichand, Cloth dealers and (3) Mrs. Hirabai Messrs. Masturchand, Cloth dealers for offences -

- (i) under section 10(1) of the Essential Supplies (Temporary Powers) Act, 1946, for having knowingly furnished false information; and
- (ii) under section 7 of the Essential Supplies (Temporary Powers) Act, 1946, for having contravened clause 3(ii) read of the Cotton Textile (Control of Movement) Order, 1948, read with Government of India, Ministry of Industry and Supply Notification No. 15-Ex.1/49 dated the 13th August 1949.

2. The proposed prosecution for an offence under section 10(1) of the Essential Supplies (Temporary Powers) Act, 1946 is in relation to the statement made by Shri Kanayalal Ambalal in his four applications to the Textile Commissioner for a transport permit in respect of 30 bales. The material statement made in these applications is that the goods which were to be transported were covered by the Sale Note CXD/3005/DOOSA/Tox/14271/2-DRS-54437 of 22nd June 1950 issued by the Textile Commissioner in favour of Messrs. Laljimal Takamal. It is alleged that this statement was false and Shri Kanayalal knew or had reasonable cause to believe it to be false or did not believe it to be true. The prosecution might be able to show on the strength of the evidence of the partners of Messrs. Laljimal Takamal corroborated by their account books as also on the strength of the evidence of the account books of Messrs. Thakkar Dharamsi Ramji that the Statement was in fact false. But it is very doubtful whether the prosecution will be able to show that Shri Kanayalal knew or has reasonable cause to believe it to be false or did not believe it to be true. Shri Kanayalal's contention is that the dealers Messrs. Rameshbhai Dhaichand and Messrs. Hirabai Masturchand who were in fact transporting those bales told him that they had pur-

purchased the cloth from Messrs. Laljimal Takamal under the sale note of Messrs. Laljimal Takamal; and that Messrs. Laljimal Takamal had agreed to his Shri Kanayalal's signing the application for a special permit on their behalf. This contention gets ^{some} support from the facts found by the Police in respect of 22 other bales. The Police report shows that out of the 52 bales which Messrs. Laljimal Takamal denied having sold under their sale note of 22nd June 1950, 22 bales were in fact, sold by their partner and were covered by the sale-note. In respect of those 22 bales 4 applications for special permits for transport were made and those applications were signed by Shri Kanayalal on behalf of Messrs Laljimal Takamal. The Police report states that no offence is committed in respect of those 22 bales. That being so Shri Kanayalal could reasonably urge that he did not know or had no reasonable cause to believe that the statement that he was making in the application for a special permit for transport was false or that he did not believe it to be true. In the circumstances, a prosecution for an offence under section 10(10) of the Essential Supplies (Temporary Powers) Act, 1946 will not lie against Shri Kanayalal. Consequently, it will be difficult to sustain a prosecution for the abetment of an offence under section 10(b) of the Act against Messrs. Ranchodhbhai Bhaichand and Messrs. Hiralal Kasturchand.

3. For a prosecution for the contravention of clause 3 of the Cotton Textile ^{of manufacture} (Control Powers) Order 1948 it will have to be established that the 30 bales in question were transported "except under and in accordance with" a special transport permit issued by the Textile Commissioner. Now in the present case special transport permits were in fact issued by the Textile Commissioner and therefore the bales were transported 'under' a special transport permit. The question is whether they were transported "in accordance with" special transport permits. The special transport permits in respect of these 30 bales apparently related to goods sold under the sale note of 22nd

June 1950 issued in favour of Messrs. Laljimal Takamal.

If the evidence-- oral and documentary -- establishes the fact that the goods transported by these 22 bales were not, in fact covered by that sale note, the transport would be not 'in accordance with' the special permit, and therefore, Messrs. Kanchodchai Bhaichand and Messrs Hiralal Masturchand could be prosecuted for the contravention of clause 3 of the Cotton Textile (Control of Movement) Order 1948. It would not be possible to prosecute Shri Kanayalal for that offence because the only part that he took in the transaction was to make an application on behalf of the dealers for a special permit in respect of the said 22 bales. ^{He}BE being a Clearing Agent, who had made similar applications for those dealers previously there was nothing unusual for those dealers previously there was nothing unusual in his making applications in respect of these 30 bales.

Sd/P.M.Lad.
22/2

Remembrancer of Legal Affairs.

U.R. to S.T.C.No.G- 79 dated the 22nd February 1952.

VGP. 26-7-56.

The view taken by the State Textile Controller's office that there is no such anomaly between paragraphs 2 and 3 of the General permit issued under the Cotton Textile (Control) of Movement Order, 1948 as pointed out by the Magistrate, is correct. Under paragraph 3 of the General Permit Transport of yarn within the same zone is permitted except in the case of transport from Greater Bombay or the Ahmedabad Municipal Borough. Such transport may be as part of personal luggage or otherwise. The provision in paragraph 2 therefore applies in effect only to transport from Greater Bombay or Ahmedabad Municipal Borough if it is in the same zone and to the inter zonal transport. The Textile Commissioner's office has also confirmed this view in Textile Commissioner's letter No. TCS IV/8528, dated the 1st June 1951. The Accused has not therefore committed any offence in transporting 23 lbs. of yarn as personal luggage in the same district and ought not to have been prosecuted. There is therefore, no necessity of amending either paragraph 2 or paragraph 3 of the General Permit as suggested by the learned Magistrate.

Sd/P.M.Lad.
19/5

Remembrancer of Legal Affairs.

U.R. to S.T.C.No. U-208, dated the 20th May 1952.

VGP. 26-7;56.